

(2005) 02 AHC CK 0199

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 45117 of 2004

Hemant Singh

APPELLANT

Vs

Adhyaksha, Zila Panchayat Etah and Others

RESPONDENT

Date of Decision : 25-02-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2005) 5 AWC 4910 : (2005) 2 ESC 1243 : (2005) 105 FLR 498

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : Shyam Narain and Sudhanshu Narain, for the Appellant; S.N. Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.—The petitioner was initially engaged as a car driver on daily wage basis with Zila Panchayat, Etah on 10.8.1992. He continued to work till 1.8.1994, when the respondent stopped taking work from the petitioner on the ground that the car which was being driven by him had become unfit. Thereafter Zila Panchayat procured a new car in December, 1995 and instead of engaging or appointing the petitioner as a Car driver, it engaged Respondent No. 5 Vijai Singh as a new Car driver. Aggrieved by such action of the respondents, the petitioner raised an industrial dispute and the State Government referred the matter to Labour Court for adjudication. By an award dated 16.10.1997 passed by the Labour Court, the petitioner was reinstated in service with full back wages and continuity of service. The said award was challenged by the Zila Panchayat, Etah in writ petition No. 30805 of 1998 in which an interim order had been initially passed on 12.10.1998 by which it was directed that the back wages shall be deposited with the labour court and the compliance of Section 17B of the Industrial Disputes Act, 1947 shall be made. The said interim order was modified by this Court on 22.5.2003 clarifying that the petitioner shall be paid the current wages by the Respondent No. 2. The said order was to remain effective for three

months and the case was directed to be listed after six weeks. However, the writ petition was finally disposed of by this Court only on 18.3.2004 with the direction that the petitioner herein (Hemant Singh) was to be paid full salary from the date of reinstatement under the interim order of this Court. With regard to the back wages, it was directed that only 50% of the same would be payable to him from 1.1.1993 till the date of his reinstatement. It is not disputed that the petitioner had been reinstated in service only on 19.3.2001.

2. After the disposal of the writ petition filed by Zila Panchayat, the Chairman of the Zila Panchayat passed an order dated 3.7.2004 directing that in compliance of the judgment of this Court dated 18.3.2004 passed in writ petition No. 30805 of 1998 the petitioner would be treated in service on the post of a Car driver in the pay scale of Rs. 3050-4950/- and would also be entitled to other benefits of dearness allowance etc. granted from time to time by various Government Orders. It was further directed that 50% of the salary with effect from 1.1.1996 to 18.3.2001 was also to be paid to him, after adjusting any amount which had been paid to the petitioner in compliance of the order of the labour court or the interim order passed by the High Court. However, thereafter by an order dated 7.10.2004 the Chairman, Zila Pachayat cancelled his earlier order dated 3.7.2004 and directed that the petitioner would only be paid the back wages at the rate of payment made to a daily wager and not a regular car driver. The petitioner has thus filed this writ petition challenging the said order dated 7.10.2004. A further prayer has also been made that the respondents may be directed to implement the order dated 3.7.2004 which has been passed in compliance of the judgment of this Court dated 18.3.2004.

3. I have heard Sri Shyam Narain, learned counsel appearing on behalf of the petitioner as well as Sri S.N. Singh, learned counsel appearing for the contesting Respondents No. 1, 2, 4 and 5 and the learned Standing Counsel appearing for Respondent No. 3 and have perused the record.

4. The main ground for challenge to the order dated 7.10.2004 is that the same had been passed in violation of the principles of natural justice without giving an opportunity of hearing to the petitioner. It has also been submitted that once re-instatement had been directed by the Labour Court with benefit of continuity of service, the petitioner could not be placed in a position inferior to that of the Respondent No. 5 who was engaged by the respondent-Zila Panchayat much after the engagement of the petitioner as car driver.

5. Sri S.N. Singh, learned counsel appearing on behalf of the respondents, has stated that the petitioner could not be placed in a better position than that on which he was working prior to the passing of the award of the labour court and since the petitioner was earlier working as a driver on daily wage basis, he could only be reinstated as a daily wage employee and not as a regular employee. As regards the case of Vijai Singh, Respondent No. 5, the learned counsel for the respondent stated that the said appointment had been made after due selection and not on daily wage basis and thus the petitioner (who was only engaged on

daily wage basis) could not claim parity with the respondent No. 5.

6. The engagement of the petitioner in the year 1992 is not denied. The respondents have also not stated that there was any complaint with regard to the work and conduct of the petitioner. The question of continuance in service and the engagement of Respondent No. 5, ignoring the case of the petitioner, is not an issue in the present writ petition. The same stands decided by the award of the labour court and the subsequent decision in the writ petition challenging the said award. This Court while deciding writ petition No. 30805 of 1998, did not interfere with the award of the labour court with regard to his reinstatement with continuity in service. The only modification made by this Court was with regard to the payment of back wages as the labour court had directed payment of full back wages, whereas the High Court modified it to only 50%. The question now would be as to on what post and in which pay scale would the petitioner be entitled to be reinstated. While interpreting the question of reinstatement in service and payment of regular salary in accordance with law, the Apex Court in the case of Regional Authority Dena Bank v. Ghanshyam 2001 LLR 641 had held that "on reinstatement the respondent will be entitled to his salary on a par with other employees working in the same post and it is in that meaning that the said clause "and is paid his salary regularly in accordance with law", has to be understood." Thus in my view the petitioner could not be placed in a position inferior to that of Respondent No. 5 as the petitioner had been initially engaged by the respondent-Zila Panchayat much prior to the engagement of respondent No. 5-Vijai Singh.

7. Once the engagement of the petitioner has been held to be valid by the labour court and confirmed by the High Court and he has been given the benefit of reinstatement and continuity of service, he would be entitled to be paid the salary at par with other employees working in the same post. Thus the initial order passed by the Chairman, Zila Panchayat on 3.7.2004 was perfectly justified and in accordance with law. The subsequent order dated 7.10.2004 withdrawing the earlier order dated 7.10.2004 does not appear to be justified. Even otherwise the said order has admittedly been passed without issuing any notice or opportunity of hearing to the petitioner.

8. Once a right had accrued in favour of the petitioner by order dated 3.7.2004, the same could not have been withdrawn without complying with the principles of natural justice and thus also the impugned order dated 7.10.2004 is bad and is liable to be set aside.

9. For the foregoing reasons this writ petition stands allowed. The order dated 7.10.2004 passed by Respondent No. 1 is quashed. The petitioner shall be entitled to payment of his salary and back wages in compliance with the order dated 3.7.2004 passed by Respondent No. 1. No order as to cost.

10. In the end, Sri S.N. Singh stated that in case if the petitioner was claiming regularization in service, then he could approach the labour court for redressal of

such grievances. In my view the said submission does not have much force as the petitioner has already been reinstated in service with full back wages by the award of the labour court.